

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERTO DURAND,

Plaintiff,

v.

CALDWELL,

Defendant.

Case No. 3:23-cv-00233-ART-CLB

ORDER DISMISSING AND CLOSING
CASE

11 *Pro se* Plaintiff Roberto Durand, an inmate in the custody of the Nevada
12 Department of Corrections, has not paid the full \$402 filing fee or filed a fully
13 complete application to proceed *in forma pauperis* ("IFP") in this action. On June
14 20, 2023, this Court denied Durand's original IFP application because he did not
15 include an inmate trust fund account statement for the previous six-month
16 period with it, and the Court ordered Durand to either pay the full filing fee or
17 file a new fully complete IFP application by August 21, 2023. (ECF No. 4). The
18 Court warned Durand this action could be dismissed if he failed to file a fully
19 complete IFP application with all three required documents by that deadline. (*Id.*
20 at 2). That deadline has expired, and Durand did not pay the required filing fee
21 or file a fully complete IFP application. Durand instead filed a second IFP
22 application that is incomplete because he again failed to include an inmate trust
23 fund account statement for the previous six-month period. (See ECF No. 5).

I. DISCUSSION

25 District courts have the inherent power to control their dockets and "[i]n
26 the exercise of that power, they may impose sanctions including, where
27 appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los*
28 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based

on a party's failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

The first two factors, the public's interest in expeditiously resolving this litigation and the Court's interest in managing its docket, weigh in favor of dismissing this action. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

The fifth factor requires the Court to consider whether less drastic alternatives can be used to correct the party's failure that brought about the Court's need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002)). Courts “need not exhaust every sanction short of dismissal before finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this Court cannot operate without

1 collecting reasonable fees, and litigation cannot progress without a plaintiff's
2 compliance with the Court's orders, the only alternative is to enter a second order
3 setting another deadline. But issuing a second order will only delay the inevitable
4 and further squander the Court's finite resources because Durand ignored the
5 first order. Setting another deadline is not a meaningful alternative given these
6 circumstances. So the fifth factor favors dismissal.

7 **II. CONCLUSION**

8 Having thoroughly considered these dismissal factors, the Court finds that
9 they weigh in favor of dismissal. It is therefore ordered that this action is
10 dismissed without prejudice based on Roberto Durand's failure to either pay the
11 full \$402 filing fee or file a fully complete application to proceed *in forma pauperis*
12 in compliance with this Court's June 20, 2023, order. The Clerk of Court is
13 directed to enter judgment accordingly and close this case. No other documents
14 may be filed in this now-closed case. If Roberto Durand wishes to pursue his
15 claims, he must file a complaint in a new case and either pay the required filing
16 fee or properly apply for *in forma pauperis* status.

17 It is further ordered that the application to proceed *in forma pauperis* (ECF
18 No. 5) is denied.

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20 DATED THIS 12th day of October 2023.

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24 ANNE R. TRAUM
25 UNITED STATES DISTRICT JUDGE
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